

**Title 20 – DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION
Division 700 –Insurance Licensing
Chapter 1 – Insurance Producers**

PROPOSED AMENDMENT

20 CSR 700-1.146 Recommendations of Annuities or Variable Life Insurance to Customers (Suitability). The department is amending section (1) and adding new sections (2) and (3).

PURPOSE OF AMENDMENT: This amendment codifies the professional duty to make appropriate recommendations for all annuities.

*PURPOSE: This rule implements the requirements of sections 375.141.1(8) and 375.143, RSMo, with respect to the **codification of professional standards of conduct in the recommendation of annuities and variable life insurance contracts**. Failure to meet these standards would constitute the demonstration of incompetence, untrustworthiness or financial irresponsibility of producers in the offer, sale or exchange of **annuities and variable life contracts**.*

(1) The standards of conduct codified in this rule reflect the professionalism of a licensed insurance producer. Grounds for the discipline or disqualification of producers shall include, in addition to other grounds specified in section 375.141, RSMo, failure to comply with or violation of the following professional standards of conduct:

(A) Variable Annuities and Variable Life Insurance.

1. In recommending to an individual customer the purchase, sale or exchange of any variable life or variable annuity product, a producer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other investment holdings and as to his financial situation and needs.

~~[(B)]~~ **2.** Prior to the execution of a variable life or variable annuity transaction recommended to an individual customer a producer shall make reasonable efforts to obtain information concerning—

~~[1]~~**A. The customer's financial status, including annual income, financial situation and needs and existing assets;**

~~[2]~~**B. The customer's tax status;**

~~[3]~~**C. The customer's age, life expectancy and health status;**

D. The customer's insurance [and investment] objectives;

E. The customer's investment objectives;

F. The customer's risk tolerance;

G. The customer's investment, insurance and financial experience;

~~[4]~~**H. The customer's investment time horizon, liquid net worth and** current and reasonably anticipated needs for liquidity; and

~~[5]~~**I. Such other information used or considered to be reasonable by such producer in making recommendations to the customer.**

[(C) No person shall materially aid any other person in any violation or failure to comply with any standard set forth in this rule.]

~~[(2)]~~**3.** Interpretation of **subsection (1)(A) of this rule** shall be guided by judicial and administrative opinions and decisions construing substantially similar requirements of the **Financial Industry Regulatory Authority or its predecessor organizations** *[National Association of Securities Dealers (NASD)]*.

(B) Fixed, Indexed or Other Covered Annuities.

1. In recommending to an individual customer the purchase, sale or exchange of a Covered Annuity contract, a producer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his insurance and investments and as to his current and reasonably anticipated financial situation and needs.

2. Prior to the execution of a Covered Annuity transaction recommended to an individual customer a producer shall make reasonable efforts to obtain information concerning—

A. The customer's financial status, including annual income, financial situation and needs and existing assets;

B. The customer's tax status;

C. The customer's age, life expectancy and health status;

D. The customer's insurance objectives;

E. The customer's investment objectives;

F. The customer's risk tolerance;

G. The customer's investment, insurance and financial experience;

H. The customer's investment time horizon, liquid net worth and current and reasonably anticipated needs for liquidity; and

I. Such other information used or considered to be reasonable by such producer in making recommendations to the customer.

(C) All Deferred Annuities.

1. No producer shall recommend to any customer the purchase or exchange of any deferred annuity, unless the producer has a reasonable basis to believe:

A. that the transaction is suitable in accordance with this rule and, in particular, that there is a reasonable basis to believe that—

i. the customer has been informed, in general terms, of various features of deferred annuities, such as the potential surrender period and surrender charge; potential tax penalty if customers sell or redeem deferred variable annuities before reaching the age of 59½; mortality and expense fees; investment advisory fees; potential charges for and features of riders; the insurance and investment components of deferred annuities; and market risk;

ii. the customer would benefit from certain features of deferred annuities, such as tax-deferred growth, annuitization, or a death or living benefit; and

iii. the particular deferred annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred annuity, and riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also is suitable) for the particular customer based on the information required by this rule; and

B. in the case of an exchange of a deferred annuity, the exchange also is consistent with the suitability determination required by subparagraph (C)1.A. of this Rule, taking into consideration whether

i. the customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements);

ii. the customer would benefit from product enhancements and improvements; and

iii. the customer's account has had another deferred annuity exchange within the preceding 36 months.

(2) **Recordkeeping.** The determinations required by this rule shall be documented and signed by the producer recommending the transaction.

(3) No person shall materially aid any other person in any violation or failure to comply with any standard set forth in this rule.

AUTHORITY: sections 374.040, 374.045, 375.013, 375.143 and 376.309.6 RSMo 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500.00) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500.00) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on February 7, 2008. The public hearing will be held at the Harry S. Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support or in opposition to the proposed amendment, until 5:00 p.m. on February 7, 2008. Written statements shall be sent to Tamara Kopp, Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans with Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five working days prior to the hearing.